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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CONSERVATORSHIP OF THE ESTATE
OF CHRISTINE GILLY

LINDA PAQUETTE et al.,

Appellants,

v.

TYNA T. ORREN,

Respondent.

B201971

(Los Angeles County
Super. Ct. No. GP 012 222)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Coleman Swart, Judge. Dismissed in part, affirmed in part.

Linda A. Paquette, in pro. per., and for Appellant Carole Boskovich.

Orren & Orren and Tyna Thall Orren, in pro. per., for Respondent.

Linda Paquette and Carole Boskovich appeal from the probate court order awarding attorney's fees to Tyna T. Orren, for her services as counsel for the conservatee in this matter. We dismiss the appeal as to Paquette because she has no standing, and affirm the order as to Boskovich.

FACTS AND PROCEDURAL HISTORY

In 1996, 88-year-old Christine Gilly placed her home in a living trust.¹ The twice-widowed and childless Gilly provided that upon her death, title to the house would be divided equally between long-time friend Rose Dudek, and Angela Haronis, a more recent acquaintance who was Gilly's hairdresser. At about the same time, Gilly signed a document stating she wanted either Dudek or Haronis to be appointed as her conservator should she ever need one. The conservator appointment document also declared Gilly's express wish to remain in her house instead of a nursing home, if her care could be provided and her needs met by staying there. Sometime in 2004, Gilly appointed Haronis to make both medical and financial decisions for her. In June 2006, Vida Negrete petitioned to be appointed as conservator for Gilly, who was then 98 and residing in a nursing home. Negrete, a registered nurse who worked as a professional conservator, sought that appointment because she said concerned staff members at Gilly's nursing home told Negrete they were concerned that Haronis was not honoring Gilly's wish to live at home and might be taking advantage of Gilly in order to obtain Gilly's house.

¹ Nothing in the record states when Gilly was born, so we are making an educated guess of her age based on statements contained in documents that are part of the appellate record. In fact, the record designated by appellants consisted of nothing other than the moving and opposition papers filed in connection with the disputed attorney's fee award, along with the transcript of the hearing on that motion. Given the complexity of the dispute, more background would have been helpful for meaningful appellate review. Respondent Orren augmented the record with various pleadings and supporting documents that helped to fill in some of the gaps. While far from a complete picture of what transpired below, it did include what we determine below was the determinative document: request for appointment of conservator in which Gilly describes the conditions under which she would accept living in a nursing home.

Negrete, represented by lawyer Linda Paquette, also filed a petition for “substituted judgment” seeking to revoke Gilly’s trust and replace it with a will on substantially the same terms, then obtain funds to care for Gilly at home by obtaining a reverse mortgage on the house. That petition also asked the court to appoint counsel for Gilly, and the probate court selected Tyna Thall Orren to represent her. (Prob. Code, § 1470, subd. (a).)²

In connection with her petitions, Negrete claimed she was unaware that Gilly had any living relatives. However, Haronis’s lawyer informed the court that Gilly had a niece, Carole Boskovich. Boskovich also sought appointment as Gilly’s conservator and urged that her aunt be returned home. Orren provisionally opposed Negrete’s petition to revoke the trust. This was based on Orren’s conversations with Gilly, who despite asking to return home, appeared to be “in good spirits and happy.” According to Orren, Gilly’s caregivers at the nursing home were concerned that Gilly, who enjoyed socializing with her fellow residents, might suffer from isolation if she were to return home. Orren noted that Haronis was willing to submit to an accounting over her management of Gilly’s trust and also agreed to have an independent examination of Gilly’s fitness to return home. Orren opposed Negrete’s appointment as conservator because she believed Negrete and Paquette had done only a cursory investigation and were committed to returning Gilly home without regard to whether that might in fact be in Gilly’s best interests. In order to avoid protracted litigation that would be costly for Gilly’s estate, Orren asked that Gilly be independently evaluated in order to determine the appropriate level of care, that Haronis be ordered to submit to an accounting, and that a neutral person – professional conservator Jim Schnieders – be appointed as Gilly’s conservator. After that, Orren wrote, the probate court would have more complete and accurate information about whether Gilly should leave the nursing home.

This apparently sparked a three-way battle among Haronis, Negrete/Paquette, and Orren, leading to numerous motions and ending in a three-day trial in March 2007.

² All further undesignated section references are to the Probate Code.

When the dust settled, the following had occurred: Negrete's petition to revoke the trust was denied; Boskovich's petition to become conservator was denied; with Negrete's agreement, Schnieders was selected as Gilly's conservator; the independent examination of Gilly determined that Gily was incontinent and suffered from dementia, and recommended she be returned home with 24-hour care on a trial basis only; Gilly's trust came under court supervision; Schnieders was ordered to obtain a reverse mortgage on Gilly's home in order to pay for her home care; once that occurred, and once the tenants leasing Gilly's house had left, Gilly was to be sent home; and Orren was discharged as Gilly's lawyer because the matter had concluded.

Orren then brought a motion to recover her fees, totaling \$17,145. (§ 1470, subd. (b).) She also sought sanctions of \$1,882.50 against Paquette and Negrete for their alleged misconduct in making frivolous and bad faith motions throughout the proceedings. The trial court denied the sanctions motion, but awarded Orren the full amount of fees requested, with \$5,000 payable once a reverse mortgage was obtained on Gilly's house, and the rest payable when the house was sold. Gilly died in 2008, and Boskovich was later appointed special administrator to prosecute the appeal.

DISCUSSION

1. Paquette Lacks Standing to Appeal

Paquette's only connection with this matter was as counsel for Negrete. In opposition to Orren's attorney's fee motion, Paquette represented Boskovich, and also purported to represent herself as an objector to the fee request. The fee award was levied against Gilly's estate, and as such, Paquette is not aggrieved by the order. Accordingly, she lacks standing to bring this appeal, and it is dismissed as to her. (Code Civ. Proc., § 902; *Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295; *In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 142.)³

³ We denied Orren's earlier motion to dismiss the appeal as to both Paquette and Boskovich. Upon further reflection, the motion should have been granted as to Paquette.

2. *The Attorney's Fee Award Was Proper*

For appointed probate counsel such as Orren, when the matter concludes the probate court “shall . . . fix a reasonable sum for compensation and expenses of counsel.” (§ 1470, subd. (b).) In setting the reasonable amount of fees under a statutory attorney fees provision, the court begins by calculating the “lodestar” amount: the number of hours reasonably expended multiplied by the reasonable hourly rate. (*Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1393-1394.) The trial courts have broad discretion in this area. The determination is necessarily ad hoc and must be resolved based on the particular circumstances of each case. In doing so, the trial court may consider all the facts and the entire procedural history of the case. An award of attorney’s fees will not be reversed on appeal unless there was a manifest abuse of discretion, a prejudicial error of law, or necessary findings not supported by substantial evidence. (*Id.* at p. 1394.)

Orren supported her fee motion with a time sheet that broke down her time in increments of tenths of an hour. She recorded 85.9 hours during the 10 months she worked on the case, but wrote off 9.7 hours incurred in connection with her sanctions motion and her review of certain documents and pleadings. She therefore requested compensation for 76.2 hours at the court-approved rate of \$225 per hour. Her time records included items such as six visits with Gilly, several hours in a mediation session with the parties, drafting and reviewing various motions, and preparing for and appearing at trial.

Boskovich’s opposition papers from the probate court fee motion did not challenge any particular item of work listed by Orren. Instead, she contended that Orren was not entitled to any fees at all because she ignored Gilly’s express wish to return home

As noted earlier, the probate court appointed Boskovich as a special administrator to bring this appeal. While it is arguable that Boskovich lacks standing because she is not a beneficiary of Gilly’s estate and is therefore not aggrieved by the fee award, we assume for the sake of analysis only that her status as special administrator confers standing.

and instead argued that it was in Gilly's best interests to remain in a nursing home. She makes the same argument on appeal.⁴

We begin with the fundamental rule of appellate review: that the lower court's orders are presumed correct, all intendments and presumptions are indulged in its favor, and ambiguities are resolved in favor of affirmance. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 765-766.) Orren supported her fee motion with a lengthy declaration detailing her efforts to ascertain whether Gilly was fit to return home, and how that cascaded into protracted litigation, due mainly to what she viewed as the misguided efforts of Paquette and Boskovich. At the hearing on the fee motion, the probate court said Orren had been asked to give her opinion, "and the fact that the opinion wasn't liked by any particular party to the case, that's unfortunate, but the fact is, the work was done by [appointed] counsel and she's entitled . . . to some fees." The court pointed out that a lot of time was spent on the case, perhaps because there was so much controversy and animosity. "But the bottom line was she did do the work and is entitled to the fee."

Boskovich's appellate argument rests on the faulty premise that Orren breached her duty to Gilly when Orren argued that Gilly might be better off staying in a nursing home, despite Gilly's express preference to return home. The source of Boskovich's discontent is the 1996 document where Gilly nominated Haronis or Dudek as her conservator. Although Gilly said she wished to avoid nursing homes, she qualified her preference by recognizing that depending on her condition, she might be better off in such a facility: "It is my express wish to avoid residing at rest homes, convalescent homes, or other similar facilities. My Conservator is directed to keep me at my personal

⁴ The appellate briefs, which were prepared by Paquette and which sometimes speak in the first person, violate most of the fundamental rules governing the content and format of such briefs. There is no clear statement of facts or procedural history, and what few facts are set forth are entirely one-sided, sometimes inaccurate, and often unsupported by record citations. Little is offered in the way of true legal argument, no authority is cited for any of the arguments made, and the briefs are in essence raging screeds against Orren and the probate court system.

residence provided that any and all of my cares and needs are consistent with my attending licensed medical physician's advice. In the event my attending licensed medical physician determines that my medical cares and needs at my residence are not being reasonably met or my Conservator determines that the cost of maintaining me at my personal residence exceeds 150 percent of the cost at a rest home, convalescent home, or similar facility, then my conservator may move me to [such a facility] where my cares and needs will be met.”

In short, Gilly recognized that, despite her preference to remain in her own house, her needs might be better met at a nursing home or similar facility. Given this, the probate court may well have reasonably concluded that Orren was carrying out Gilly's directive by questioning whether her needs could be best met at home, and by arranging for an independent medical evaluation to help resolve that issue. Because there was substantial evidence that Orren was in fact carrying out her client's wishes, Boskovich's lone basis for reversing the attorney's fee award is without merit.

DISPOSITION

For the reasons set forth above, Paquette's appeal is dismissed, and the probate court order awarding respondent Orren her attorney's fees is affirmed. Respondent shall recover her costs on appeal.

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RUBIN, ACTING P. J.

WE CONCUR:

BIGELOW, J.

BAUER, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.